

Staff Summary Report



Council Meeting Date: 06/05/08

Agenda Item Number: _____

SUBJECT: Request authorization for the Mayor to sign an Intergovernmental Agreement with Tempe Elementary School District #3 to use bus wash, vacuum and storage space at the City of Tempe East Valley Bus Operations and Maintenance Facility.

DOCUMENT NAME: 20080605PWRY02 **TRANSPORTATION PLANNING (1101-01)**

SUPPORTING DOCS: No

COMMENTS: Contract amount for Intergovernmental Agreement totals \$1,200.00 per year.

PREPARED BY: Robert Yabes, Principal Planner, 350-2734

REVIEWED BY: Carlos de Leon, Deputy PW Manager, 350-8527

APPROVED BY: Glenn Kephart, Public Works Manager, 350-8205

LEGAL REVIEW BY: Judith Morgan: Assistant City Attorney, 350-8227

FISCAL NOTE: Tempe Elementary School District #3 will pay the City \$100.00 per month for the storage area and \$3.00 per bus for each use of the bus wash and vacuum for five years.

RECOMMENDATION: Recommend Approval.

ADDITIONAL INFO: Tempe Elementary School District # 3 (TD3) Brogan Center, which houses its school bus and two other major operations for the school district and is located at Priest and University drives, is undergoing reconstruction. In addition to temporary bus parking request, TD3 also requested to rent approximately one acre of outside storage space and the use of the bus wash and vacuum equipment at the East Valley Bus Operations and Maintenance Facility (EVBOM). EVBOM is a federally funded transit facility and requires FTA approval for any shared use of the facility. This IGA specifies the terms and conditions for the shared use of the EVBOM as approved by the FTA. TD3 will be leasing the bus storage space for \$100.00 per month and \$3.00 per bus for each use of the bus wash and vacuum for five years.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
TEMPE ELEMENTARY SCHOOL DISTRICT NO. 3
AND
THE CITY OF TEMPE**

This Intergovernmental Agreement is entered into this ____ day of _____, 2008, by and between the City of Tempe, Arizona, a municipal corporation (hereinafter "City"), and the Tempe Elementary School District No. 3 (hereinafter "District").

RECITALS:

A. WHEREAS, A.R.S. §11-952 et seq., authorizes the parties to enter into an Intergovernmental Agreement for the cooperation of the parties; and,

B. WHEREAS, the City and the District have reached an agreement, as set forth herein, whereby the City will provide to the District use of a storage space for the purpose of storage for District equipment, and for specified cleaning and maintenance functions as expressly stated herein, whereby the District will provide funding to the City, for such use.

NOW THEREFORE, the City and District, in consideration of the mutual representations and covenants set forth herein, and for other good and valuable consideration, do mutually agree as follows:

AGREEMENT:

1. Effective Date: This Agreement shall be deemed effective after its approval by the School Board for Tempe Elementary School District No. 3 and by the City Council of the City of Tempe, and upon filing the original executed Intergovernmental Agreement with the office of the Maricopa County Recorder, and shall continue in effect until performance required as set forth herein, is completed.

2. Authorization: This Agreement is entered into between the parties pursuant to A.R.S. §11-952. The City of Tempe (City) is further authorized to enter into this Agreement pursuant to Tempe City Charter, Section 1.03. Tempe Elementary School District No. 3 (District) is further authorized to enter into this Agreement pursuant to A.R.S. §15-302. By their signatures below the attorneys for the City of Tempe and for Tempe Elementary School District No. 3 have determined that the Agreement is in proper form and is within the powers and authorities granted under the laws of the State to its respective public agencies.

3. Purpose. The purpose of this Intergovernmental Agreement is to provide funding to the City for the District's use of designated storage space at the East Valley Bus Operations and Maintenance Facility located at 2050 W Rio Salado Parkway Tempe, Arizona ("Facility"), for storage of District equipment, fuel, vacuums and/or to maintain and clean District buses.

4. Term. The initial term of this Intergovernmental Agreement is _____ 1, 2008 through December 31, 2013. This Agreement may be renewed for an additional term of five (5) years, in the City's sole discretion.

5. Use. City hereby agrees to allow the District to use one (1) acre of designated space for storage within the Facility ("Designated Storage Space") upon the terms and conditions and for the consideration set forth herein. In addition, City authorizes use of the wash equipment at the Facility for District buses. District agrees that its use of the wash equipment shall be limited to the hours of 9:00 AM to 3:00 PM on weekdays only. District's priority for use of the wash equipment is automatically subject and subordinate to City's use of the wash equipment and Designated Storage Space. The location of the Designated Storage Space is shown in Exhibit B. No other use is permitted by this Agreement.

6. Funding. District shall remit the sum of One Hundred Dollars (\$100.00) per month, to City on or before the 1st day of each month, effective _____ 1, 2008, and throughout the initial term, with each payment due and owed to City by the first of each month, in consideration for use of the Facility as set forth herein. Funding may increase as determined by the City in its sole discretion, due to anticipated increases in associated expenses, including *inter alia*, increases in costs of utilities, detergent, or supplies.

7. Unauthorized Use Prohibited. Use of the Facility by the District, its agents, assigns and employees, is strictly limited to the terms set forth herein. However, nothing in this Intergovernmental Agreement shall be construed to prevent the City from supplementing or authorizing additional use(s) of the Facility, upon City's prior written approval.

8. Hazardous Materials.

a. District covenants and agrees that it shall, at all times during the term of this Intergovernmental Agreement, and at its sole cost and expense, comply with and assume sole responsibility and liability under all environmental laws applicable to use of or operations at the Facility by District, its agents, assigns and/or employees. District agrees that should it or any of its agents, assigns or employees know of (a) any violation of environmental laws relating to the Facility, or (b) the escape, release or threatened release of any hazardous materials in, on, under or about the Facility, District shall promptly notify the City in writing of such, and that it will provide all warnings of exposure to hazardous materials in, on, under or about the Facility in strict compliance with all applicable environmental laws. Further, District covenants and agrees that it shall at no time use, analyze, generate, manufacture, produce, transport, store, treat, release, dispose of or permit the escape of, or otherwise deposit in, on under or about the Facility, any hazardous materials, or permit or allow any of its agents, assigns or employees to

do so. Prior to use of the Facility the District shall provide the City an inventory of all equipment and materials stored and/or to be stored at the Facility.

b. For purposes of this Intergovernmental Agreement, hazardous materials shall include but is not limited to, any and all substances, chemicals, wastes, sewage or other materials that are now or hereafter regulated, controlled or prohibited by any environmental laws, including without limitation, any (a) substance defined as a "hazardous substance", "extremely hazardous substance", "hazardous material", "hazardous chemical", "hazardous waste", "toxic substance" or "air pollutant" by Federal laws, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.*, and all amendments thereto, or other similar governmental restrictions; and (b) any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, injurious by itself or in combination with other materials; (ii) is controlled, designated in or governed by any hazardous materials laws; (iii) gives rise to any reporting, notice or publication requirements under any hazardous materials laws; or (iv) gives rise to any liability, responsibility or duty on the part of the City or District with respect to any third person under any hazardous materials laws.

9. Federal Law. This Agreement and the funding thereof is subject to all applicable Federal Transit Administration ("FTA") requirements and regulations. The funding, program and arrangement proposed by District to meet its obligations under this Agreement are more particularly described on Exhibit 1, attached hereto and by this reference incorporated herein. The funding and program set forth in Exhibit 1 shall not be altered or amended as to any substantive matter without the prior approval of City.

10. Records. Both District and City will be responsible for maintaining appropriate records and accounts to verify the costs and expenditures associated with and required by their respective obligations and commitments under this Agreement. These financial records shall be available upon request of either party to this Agreement.

11. Insurance. City is a self-insured entity for purposes of liability but it will require District and any contractor(s) or subcontractor(s) providing services, to provide City with certificates of insurance for the following: Commercial general liability insurance coverage in an amount no less than \$2 million each occurrence and \$2 million in the aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations; Commercial Auto Liability of \$2,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable; and Workers' Compensation and Employers Liability statutory limits as required by the State of Arizona. The certificates of insurance must name both the City and District as additional insureds, and designate said insurance as primary coverage over the City's self-insurance program. Contractor shall include all subcontractors and sub-subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for the Contractor.

The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnification from District to City.

12. Repairs. District and/or its contractor will be responsible to reimburse City for damages and/or repairs related to the operation of the Facility, relating to District's use, operations or access thereto. On a routine basis, District and City will inspect the Facility. Except as set forth in Exhibit 1, routine maintenance of the Facility shall remain the responsibility of City.

13. Termination. This Agreement may be terminated upon ninety (90) days written notice by either party delivered by hand or by certified mail return receipt requested, to the Tempe City Manager, as if to the City, and to the Superintendent for District, as if to District. This Agreement is subject to termination by the City pursuant to A.R.S. §38-511.

14. Indemnification. District shall indemnify, defend and hold harmless City, its employees, agents and representatives, from any and all alleged claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any attorney's fees or litigation expenses, which may be brought or made against or incurred by City, its employees, agents, and/or representatives, on account of loss of or damage to any property or for injuries to or death of any person caused by, arising out of, or contributed to, in whole or in part, by reason of any act, omission, professional error, fault, mistake or negligence of District, its employees, agents or representatives, in connection with or incidental to the performance of this Agreement. District's obligation under this Section does not extend to liability solely arising from or caused by gross negligence or willful misconduct of City, or its agents, employees, or representatives. District shall require any and all subcontractor(s) and sub-subcontractor(s) to indemnify and hold harmless City, its employees, agents, and representatives, relating to or in connection with the Facility and/or this Agreement. The City shall not be liable or responsible for any damage, destruction or loss of any kind to District's property at or around the Facility, or relating to District's use, operations or access to Facility.

15. Default. If District should default or breach its performance of obligations under this Agreement, the City shall provide written notice of the default, and District shall have reasonable time in which to cure said default, but in no event shall that reasonable time exceed thirty (30) days. If no cure is made by District, the City shall be entitled to remedy the default using any and all rights or remedies at law or in equity available to it, in order to enforce the provisions of this Agreement and recover applicable damages, in addition to termination of this Agreement.

16. Improvements. Any improvements performed at the Designated Storage Space or wash equipment, including but not limited to, additional security equipment, site grading or otherwise, including all permits pertaining for such improvements shall be obtained by District at its sole expense.

17. Prohibited Acts. District shall not create or permit a nuisance upon or around the Facility, or act, perform or demonstrate in any manner considered objectionable to City, or its employees, patrons or invitees, or which shall in any manner be dangerous or reasonably foreseeable to cause injury or damage to any person or real or personal property. In addition,

District is expressly prohibited from collecting or charging any fee in connection with its use of the Facility, including the Designated Storage Space and/or wash equipment. Further, District expressly acknowledges and agrees that City reserves the right to prohibit any and all activities on or around the Facility, in City's sole discretion.

18. Independent Contractor Relationship. The relationship between City and District is that of independent contractors and nothing contained in this Agreement shall be construed as establishing an employer/employee relationship, partnership or joint venture between the parties.

19. No Assignment. District may not assign its duties, obligations, rights or responsibilities under this Agreement, without prior express permission from the City.

20. Entire Agreement. This Agreement and all Exhibits thereto, constitute the entire understanding between the parties with respect to the Facility, and supersedes any and all prior agreements whether written or oral between the parties. No modifications or amendments shall be made absent a written agreement signed by the parties.

21. Severability. The invalidity of any portion or provision of this Agreement shall not affect the validity of any other provision contained herein or the remaining portion(s) of the Agreement. No failure on the part of the City to exercise and no delay in exercising any right, remedy or power relating to this Agreement shall operate as a waiver thereof, nor shall any exercise or partial exercise of any right, remedy or power hereto by the City operate to preclude any other or further exercise thereof or any other right, power or remedy. No waiver of any provision, right, remedy or power relating hereto shall be effective except by express writing to that effect by the City.

22. Governing Law. This Agreement shall be governed by the laws of the State of Arizona without regard to conflicts of law jurisprudence and any litigation between the parties regarding this Agreement or the performance of any of the obligations contained in this Agreement shall be initiated in Maricopa County, Arizona.

23. Time of the Essence. Time is of the essence in this Agreement and each and every provision herein, except as may be expressly provided in writing by the City.

DATED this _____ day of _____, 2008.

TEMPE ELEMENTARY SCHOOL
DISTRICT NO. 3

Governing Board President

DATED: _____

Approved as to form, content and

within the lawful authority of Tempe
Elementary School District No. 3

By _____
Attorney

CITY OF TEMPE

By _____
Mayor

DATED: _____

ATTEST:

City Clerk

Approved as to form

By _____
City Attorney

Exhibit 1
FUNDING AND PROGRAM

City Responsibilities:

- 1) Provide access to the Designated Storage Space at East Valley Bus Operations and Maintenance Facility located at 2050 W Rio Salado Parkway, Tempe AZ 85281.
- 2) Provide Identification and Access Cards to District authorized employees, upon reasonable request by the District.
- 3) Complaints relating to District's use of the Facility must be addressed to:

RC Noderer
Transit Facility Maintenance Manager
East Valley Bus Operations and Maintenance Facility
2050 W Rio Salado Parkway
Tempe, AZ 85281

District Responsibilities:

- 1) Recognize and defer to City's use of the Facility, and all applicable safety laws, as well as all laws, rules and regulations of the Federal Transit Administration.
- 2) Pay \$3.00 for each school bus washed and vacuumed.
- 3) School buses shall only be washed on weekdays between the hours of 9:00 am and 3:00 pm.
- 4) City shall always have priority of use of bus wash equipment and vacuum even during the designated hours.
- 5) Pay \$100.00 monthly cost on or before the 1st of each month during the term of the Agreement. Check(s) shall be made payable and remitted to the City of Tempe, PO Box 5002, Tempe, Arizona 85280.
- 6) Remit payment in the amount of Ten Dollars (\$10.00) for each identification card issued to District personnel.
- 7) District agrees to maintain upkeep and preserve the cleanliness and condition of the Facility relating to its use, including but not limited to, full remediation of any and all diesel or lubricant spills at the Facility.
- 8) All District infractions will be reported to :

Paul Novak
Transportation Director
Tempe School District 3
1430 W Elna Rae Street
Tempe AZ 85281

- 9) All District agents, employees, contractors and assigns must fully comply with all rules and regulations as described below:
 - a. All District school bus drivers must follow all posted speed limit and/or safety signs in the Facility.
 - b. Must display Identification Badges at all times when inside the Facility.
 - c. Must refrain from bringing and parking personal vehicles at the Facility.
 - d. Must not perform major repairs at the Facility.
 - e. Must immediately report lost or stolen identification cards and will remit payment of \$10.00 for each replacement card.



PROJECT: EAST VALLEY
BUS OPERATIONS AND MAINTENANCE FACILITY
2050 WEST RIO SALADO PARKWAY
TEMPE, ARIZONA
DATE: 11/11/2011
DRAWN BY: J. HARRIS
CHECKED BY: J. HARRIS

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
5. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.

East Valley
Bus Operations and Maintenance Facility
2050 WEST RIO SALADO PARKWAY
TEMPE, ARIZONA

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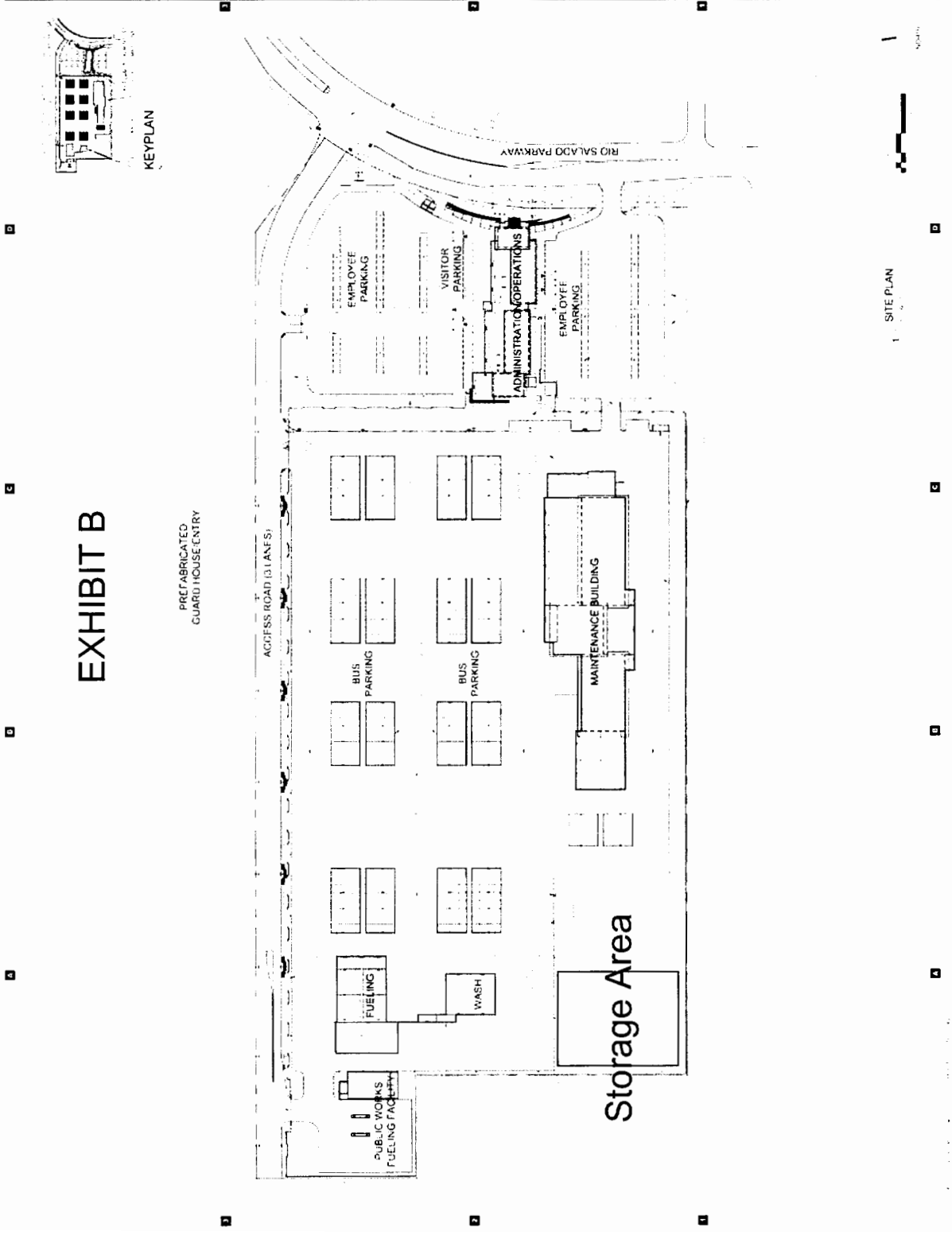


EXHIBIT B